

**Readopt He-P 3207.01, effective 10-1-14 (Document # 10583), cited and to read as follows:**

CHAPTER He-P 3200 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

PART He-P 3207 SANCTIONS

He-P 3207.01 Local Agencies. The department shall disqualify a local agency under the criteria specified in 7 CFR 246.5(e).

**Readopt with amendment He-P 3207.02, effective 10-1-14 (Document # 10583), to read as follows:**

He-P 3207.02 Participants.

(a) Participant sanctions shall be as follows:

- (1) All periods of suspension, termination, or disqualification shall commence with the next one-month voucher issuance following notice to the participant provided that the food package for that month will be prorated in accordance with these rules should the next set of food instruments be provided during the notice period;
- (2) If a period of suspension exceeds the expiration of the current certification period, the participant shall be disqualified from reapplication until the period of suspension has been completed;
- (3) The actions of a participant, a parent or caretaker of an infant or child participant, or a proxy shall be binding on the participant in the determination of violations and imposition of sanctions;
- (4) Sanctions shall only be imposed on those participants for whom the evidence supports the sanction and not to all participating family members, even though the violations might have been committed with food instruments issued to one member;
- (5) When more than one violation is involved, the sanction shall be based on the highest category violation;
- (6) Excluding (i) and (j) below, if a local agency competent professional authority submits a recommendation stating that the imposition of the disqualification would create an extreme nutritional hardship for the participant, the department shall waive a disqualification provided such waiver does not conflict with RSA 132:12-a, II;
- (7) The competent professional authority's recommendation described in (6) above shall be made in writing to the department;
- (8) The department shall grant or deny a waiver, requested in accordance with (6) and (7) above, within 15 days; and
- (9) When a waiver has been requested, sanctions shall not be imposed pending waiver decision.

(b) The following shall apply if a participant fails to pick up food instruments as scheduled:

- (1) A participant who fails to participate by not picking up food instruments on the first day of the one-month of voucher issuance shall be disqualified from the program following the second consecutive month of failure to participate;
  - (2) On the 22nd day of the one-month voucher issuance, a participant who fails to pick up food instruments shall be determined to be non-participating for that month;
  - (3) The local agency shall mail a notice of appointment for the next regularly scheduled voucher appointment and a notice of disqualification if the participant fails to participate for that month; and
  - (4) On the 22nd day of the second one-month voucher issuance, the participant shall be determined to be non-participating for that month and disqualified from the program in accordance with (2) above.
- (c) Category I violations shall include actions related to misuse of program benefits or disruptive participant behavior such as:
- (1) Failure to follow proper redemption procedures;
  - (2) Failure to follow proxy procedures;
  - (3) Selection or purchase of unapproved foods within a WIC-approved food category;
  - (4) Selection or purchase of unapproved quantities of WIC-approved foods; and
  - (5) Behavior within a store or WIC clinic that is disruptive but not abusive or threatening.
- (d) Category I violations shall be subject to the following sanctions:
- (1) Written warning for the first occurrence within a 12-month period, unless a violation of Category II (e)(1) or (e)(2) for abusive behavior has been issued within a 12-month period, then (d)(2) below shall be implemented;
  - (2) A one-month suspension for the second occurrence within a 12-month period following warning;
  - (3) A 3-month disqualification for the third occurrence within a 12-month period following a one-month suspension for the second occurrence; and
  - (4) A participant disqualified for a Category I violation but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.
- (e) Category II violations shall include actions related to more serious misuse of program benefits or abusive participant behavior such as:
- (1) Abusive behavior within a store or WIC clinic such as swearing, hitting, or threatening department, local agency or vendor staff or other participants;

- (2) Abusive behavior over the phone such as swearing or threatening department, local agency or vendor staff;
  - (3) Redeeming food instruments prior to the valid date or after the expiration date printed on the food instrument;
  - (4) Redeeming food instruments which have been altered; and
  - (5) Purchasing non-WIC-approved foods.
- (f) Category II violations shall be subject to the following sanctions:
- (1) Written warning for the first actual or attempted occurrence;
  - (2) A 3-month disqualification for any subsequent actual or attempted occurrence within a 12-month period following warning; and
  - (3) A participant disqualified for a Category II violation, but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.
- (g) Category III violations shall include actions related to fraud or abuse of the WIC program such as:
- (1) Misrepresentation of eligibility for program benefits;
  - (2) Purchase of non-food items;
  - (3) Purchase of alcohol or tobacco products;
  - (4) Exchange of food instruments for cash or credit from retail vendors;
  - (5) Sale or attempted sale of WIC foods, infant formula, infant food or food instruments;
  - (6) Receipt from retail vendors of cash or credit toward purchase of unapproved foods or other items in exchange for food instruments or for foods purchased with food instruments;
  - (7) Redeeming both the food instrument reported lost or stolen and the replacement food instrument, resulting in over issuance of benefits;
  - (8) Returning WIC foods to a WIC vendor or other non-authorized retail store for cash or store credit;
  - (9) Returning WIC foods to a WIC vendor or another retail store for credit toward unapproved items; and
  - (10) Any return or attempt to return or sell infant formula by or on behalf of a participant or payee for cash or store credit if the specific brand of infant formula is the same as that included in the food package issued to the participant or payee.

(h) Category III violations shall be subject to the following sanctions:

(1) A 3-month disqualification for any actual or attempted occurrence, except as allowed by (k); and

(2) A participant disqualified for a Category III violation, but for whom disqualification has been waived in accordance with (a)(6) and (a)(7) above, shall be issued food instruments on a monthly basis for a 3-month period beginning at the next food instrument pickup or certification.

(i) Except as allowed by (k) below, the department shall disqualify a participant for one year in accordance with 7 CFR 246.12(u)(2) when:

(1) There is dual participation as defined in 7 CFR 246.2;

(2) The department determines that program benefits have been obtained or disposed of improperly and these benefits total more than \$100.00; or

(3) There is a second or subsequent demand for repayment of any amount.

(j) The department shall collect improperly obtained benefits when there is a loss of funds as follows:

(1) In accordance with 7 CFR 246.23(c)(1), the department shall demand repayment, in writing, from the participant or parent or caretaker of an infant or child participant equal to the full value of these benefits;

(2) The department shall issue a second demand for repayment if full restitution is not made or a repayment schedule is not agreed upon within 30 days of receipt of the demand for repayment as described in (1) above; and

(3) If no written or oral response has been received from the participant or parent or caretaker of an infant or child participant after the second demand for repayment as described in (2) above, the department shall refer the matter to the New Hampshire department of justice.

(k) The department shall permit the participant to continue participation in lieu of a mandatory disqualification when:

(1) Full restitution is made within 30 days;

(2) A payment plan is agreed to within 30 days of receipt of the letter demanding repayment; or

(3) For participants under the age of 18 and infant and child participants, the department approves proxies.

(l) If full restitution is made or a repayment schedule is agreed upon before the end of a mandatory disqualification period as described in (i) above, the department shall allow a disqualified participant to reapply for the program.

(m) Failure to make full and timely payment, as agreed upon in (k) or (l) above, shall result in disqualification for the remaining disqualification period established in the original disqualification notice.

#### APPENDIX

<b>RULE</b>	<b>STATUTE</b>
He-P 3207.01	7 CFR 246.2, 7 CFR 246.7
He-P 3207.02	7 CFR 246.5, 246.12, 246.15 and 246.23(b), and 246.23(c)